

## COUNTRY REPORT: SINGAPORE

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This report focuses on Singapore's new law, *the Transboundary Haze Pollution Act*,<sup>1</sup> which seeks to address the issue of air pollution in Singapore caused by forest fires in neighbouring states, particularly Indonesia. This new law was passed to try to stop, or at least discourage, companies in Indonesia from burning vast tracts of forests, particularly to make way for oil palm plantations as well as for the pulp and paper industry. This new law allows the prosecution of errant companies, partnerships or individuals in Singapore that have links to plantations in Indonesia by holding them responsible for a particular haze episode in Singapore if satellite and other images show that there is burning from their property in Indonesia. This is facilitated by a series of presumptions that help establish a causal link to enable the entity to be charged.

It is clear that this law is novel and, in many ways, challenges traditional concepts of liability. This is acknowledged by the Minister of Environment and Water Resources, Dr Vivian Balakrishna, who, in introducing the Bill, said "...I want to be upfront. This Bill will be challenging to implement...Many have told me that this Bill is novel, and introduces new legal concepts to our Singapore law which we may not have prior experience to guide us. Therefore I do not anticipate that we will, immediately or in the near future, have an overwhelming number of prosecutions against companies once the Act comes into force. In fact, I expect NEA<sup>2</sup> to be thorough and to exercise careful judgment when implementing the legislation and, when it is time to identify the company that should be subjected to the full consequences of the law. At this point, I would also like to reassure responsible businesses that adopt environmentally sustainable practices that they have nothing to fear."<sup>3</sup>

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<sup>1</sup> Singapore's laws can be accessed at this site - <http://statutes.agc.gov.sg/aol/home.w3p>.

<sup>2</sup> Singapore's National Environment Agency - see <http://www.nea.gov.sg/>.

<sup>3</sup> Second Reading of the Bill, Parliament No 12, Session 2, Vol 92, sitting no. 10, 04 August 2014. <http://www.parliament.gov.sg/publications-singapore-parliament-reports>.

The public was consulted on the Bill, and many views, particularly from NGOs and academics were collated and carefully considered. As background to this problem, the use of fire for the clearing of forests for agriculture has been practised by farmers in Southeast Asia for generations. However, the scale of destruction has been unprecedented in recent years with the advent of massive plantations for the palm oil industry. Indeed, it has been found that Indonesia is destroying its tropical rainforests faster than Brazil, and in 2012, some 840,000 hectares of forests were cleared.<sup>4</sup> In the words of Singapore's Minister Balakrishnan, "In the period from 2000-2012 - in a period of 12 years - the area in Indonesia which has been deforested, in 12 years, is larger than the entire land area of England. That gives you an idea of the scale of deforestation. So it is not the small farmer engaged in traditional slash-and-burn cultivation that is the culprit. It is the industrial scale deforestation in pursuit of profits from plantations, and in particular, palm oil plantations."<sup>5</sup>

These fires have caused grave environmental damage to the native forests and ecosystems in Indonesia, and have also caused severe air pollution in Indonesia itself, as well as in neighbouring states including Singapore and Malaysia. The fires on peat lands are particularly difficult to extinguish. In 1997, Singapore's Pollutant Standards Index (PSI)<sup>6</sup> reached an unhealthy 226. Malaysia, Thailand and even the Philippines were also adversely affected by the haze. On 10th June, 2002, the Governments of the ten ASEAN Member Countries signed *the ASEAN Agreement on Transboundary Haze Pollution*<sup>7</sup> in Kuala Lumpur, Malaysia. This Agreement is the first regional arrangement in the world that binds a group of contiguous states to tackle transboundary haze pollution resulting from land and forest fires. It has also been considered as a global role model for the tackling of transboundary issues. Parties to the Agreement are required to:

- (i) cooperate in developing and implementing measures to prevent, monitor, and mitigate transboundary haze pollution by controlling sources of land and/or forest fires, development of monitoring, assessment and early warning systems, exchange of information and technology, and the provision of mutual assistance;

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<sup>4</sup> "World's worst illegal logging in Indonesia", Sydney Morning Herald, June 30, 2014. See <http://www.smh.com.au/victoria/worlds-worst-illegal-logging-in-indonesia-20140630-zsq5j.html>.

<sup>5</sup> See n. 4 above.

<sup>6</sup> [http://www.haze.gov.sg/docs/default-source/faq/computation-of-the-pollutant-standards-index-\(psi\).pdf](http://www.haze.gov.sg/docs/default-source/faq/computation-of-the-pollutant-standards-index-(psi).pdf).

<sup>7</sup> [http://haze.asean.org/?wpfb\\_dl=32](http://haze.asean.org/?wpfb_dl=32).

(ii) respond promptly to a request for relevant information sought by a State or States that are or may be affected by such transboundary haze pollution, with a view to minimising the consequence of the transboundary haze pollution; and

(iii) take legal, administrative and/ or other measures to implement their obligations under the Agreement.

The Agreement established an ASEAN Coordinating Centre for Transboundary Haze Pollution Control to facilitate cooperation and coordination in managing the impact of land and forest fires in particular haze pollution arising from such fires. The Agreement was signed by all ten states, ratified by nine (with the exception of Indonesia), and entered into force on 25 November 2003. Singapore<sup>8</sup> and Malaysia<sup>9</sup> established collaborative efforts with Indonesia. The burning of forests in Indonesia, however, continued despite these efforts. In June 2013, Singapore's PSI was an extremely hazardous 401, causing considerable economic loss and national distress. This prompted the passing of the *Transboundary Haze Pollution Act* which takes effect from 25th September 2014, after extensive public consultation and debate.

This Report will focus on this new law, which seeks to impose criminal and civil liability on any sole proprietorship, partnership, corporation or other body of persons ("entity") whose conduct causes or contributes to haze pollution in Singapore. The Act is intended to have extra-territorial application, as it expressly extends to "any conduct or thing outside Singapore which causes or contributes to any haze pollution in Singapore (s. 4)."

The Act makes it an offence for an entity to engage in conduct (whether inside or outside Singapore), or to condone the conduct of another entity, which causes or contributes to haze pollution in Singapore.(s.5(1)) It is also an offence if an entity participates in the management of another entity which owns or occupies land overseas, and that other entity engages in conduct, or condones the conduct of another, which causes or contributes to haze pollution in Singapore (s. 5(3)). The offence is established if "at or about the time" of such conduct, there is haze pollution in Singapore (s.5(1)(b); s5(3)(d)). Section 3 defines the meaning of participation of an entity in the management of another entity.

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<sup>8</sup> See Indonesia-Singapore collaboration in Jambi Province - Haze Action Online - [http://haze.asean.org/?page\\_id=234](http://haze.asean.org/?page_id=234).

<sup>9</sup> See Indonesia-Malaysia collaboration in Riau Province, Indonesia - [http://haze.asean.org/?page\\_id=238](http://haze.asean.org/?page_id=238).

Haze pollution in Singapore is defined in S.2 to mean “...any poor air quality episode involving smoke from any land or forest fire wholly outside Singapore”. *The Transboundary Haze Pollution (Air Quality) Regulations* defines “poor air quality episode” as a situation in which the air quality in any part of Singapore reaches a Pollutant Standards Index (PSI) of 101 or higher; and this has lasted for a continuous period of 24 hours or longer.

In the words of the Minister for Environment and Water Resources, this new law was “designed to catch entities that are directly or indirectly involved in slash-and-burn activities overseas that result in haze pollution in Singapore. In short, a party does not need to have started the fire itself in order to be held liable for the act. A party would be liable if it participates in the management of the actual offending party ...the second entity.”<sup>10</sup>

Section 3 sets out the three circumstances in which an entity is regarded as having participated in the management of another entity:

- (a) where the first entity actually participates in the management or operational affairs of the second entity,
- (b) the first entity exercises decision-making control over any business decision by the second entity, or
- (c) the first entity exercises control at a level comparable to that exercised by a manager of the second entity encompassing day to day decision-making.

The penalty is a daily fine not exceeding SGD\$100,000 (USD\$80,000) for every day or part thereof that there is haze pollution in Singapore occurring at or about the time of such conduct. The maximum fine that can be imposed is \$2 million. An entity can be served with a Preventive Measures Notice and be required to take certain action or refrain from certain action in relation to haze pollution in Singapore. Failure to comply with this Notice entails an additional fine not exceeding \$50,000 for every day or part thereof that the entity failed to comply with the Notice (s.5).

Where offences are committed by a body corporate, an unincorporated association or a partnership, section 16 extends liability to officers of the entity unless the individual can prove that the offence was committed without his consent, connivance or privity and that he

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<sup>10</sup> See Parliamentary Debates, 4 August 2014 (Parliament No. 12, Volume 92, Session 2) at Second Reading of Bill.

had exercised all due diligence to prevent the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

Section 6 provides for civil liability for causing haze pollution in Singapore. It first establishes a duty on an entity not to engage in conduct that contributes to haze pollution in Singapore, including condoning the act of another entity. Breach of this duty enables an action to be brought in Singapore by any person who is injured or dies, or whose property is damaged or who sustains any economic loss in Singapore. The Court will determine the amount of damages. It was emphasized in the Parliamentary debate on the Bill that the civil liability provided for in this Act will only take effect in relation to haze episodes occurring after the date of coming into force of this law.<sup>11</sup> In other words, this law will not operate retrospectively.

Section 7 allows for defences “on a balance of probabilities” for prosecutions under section 5 as well as for civil claims under section 6. First, it shall be a defence if the accused can prove, on a balance of probabilities, that the haze pollution in Singapore was caused solely by “a grave natural disaster or phenomenon; or an act of war” (s.7(1)). Next, it is a defence if he can prove on a balance of probabilities, that the pollution was caused by the conduct of another person acting without the defendant's knowledge or consent, or contrary to the defendant's wishes or instructions (s.7(2)). However, this other person cannot be an employee or agent of the defendant; or a person engaged by the defendant or his employee to carry out any work on the land owned or occupied by the defendant; or a person who “has a customary right under the law of a foreign state or territory outside Singapore as regards the land in that foreign state or territory and with whom the defendant has an agreement or arrangement” relating to any farming or forestry operations to be carried out in that land (s.7(2)(d)). It is also a defence if the defendant took all reasonable measures to prevent such conduct by the other entity (s. 7(3)).

The Minister noted that the law needs to take into account “the complex land ownership structure in overseas countries and commercial relationships” and “[t]herefore, the defences stipulated under clause 7(2) and 7(4) cannot be used by the accused or defendant if the haze pollution was caused or contributed by his/her employee or agent, or any person and the person's employees that have been engaged, directly or indirectly, by the accused to carry out work on the land that the accused owns or occupies.

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<sup>11</sup> See above n. 8 and also the Debate on 5 August 2014.

The real challenge, of course, is establishing a clear nexus between the transboundary haze in Singapore and the party/parties that are responsible. Thus, section 8 provides a series of presumptions to allow the establishment of a causal link through the use of reasonably probative circumstantial evidence with the help of technology, such as high-resolution satellite images and meteorological information at or near the time that the transboundary haze pollution occurs in Singapore. Further presumptions are also provided under section 8 to facilitate identification of an entity responsible for the haze pollution in Singapore; the establishment of the causal link between an entity that participates in the management of another entity and where the other entity is responsible for the haze pollution in Singapore; and for the identification of the owner or occupier of land through maps from recognised sources. All these presumptions are assumed to be true until the contrary is proved.

Thus, section 8 reads:

#### **8. Presumptions**

(1) For the purposes of this Act, where it is proved that —

(a) there is haze pollution in Singapore;

(b) at or about the time of the haze pollution in Singapore, there is a land or forest fire on any land situated outside Singapore; and

(c) based on satellite information, wind velocity and direction and other meteorological information at or about the time of the haze pollution in Singapore, the smoke resulting from that fire is moving in the direction of Singapore,

it shall be presumed, until the contrary is proved, that there is haze pollution in Singapore involving smoke resulting from that land or forest fire, notwithstanding that there may be, at or about the same time, any land or forest fire or other fire on any other land situated outside Singapore (whether or not adjacent to the land referred to in paragraph (b)) or in any part of Singapore.

(2) For the purposes of this Act, where —

(a) it is proved, or presumed by the operation of subsection (4), that an entity owns or occupies any land situated outside Singapore; and

(b) it is further proved, or presumed by operation of subsection (1), that any haze pollution in Singapore involves smoke resulting from any fire on that land outside Singapore,

it shall be presumed, until the contrary is proved, that the entity which is the owner or occupier of the land engaged in conduct, or engaged in conduct that condones any conduct by another, which caused or contributed to that haze pollution in Singapore.

(3) For the purposes of this Act, where —

(a) it is proved that an entity (referred to in this subsection as the first entity) participates in the management of another entity (referred to in this subsection as the second entity); and

(b) it is further proved, or presumed by operation of subsection (2), that the second entity engaged in conduct, or engaged in conduct that condones any conduct by another, which caused or contributed to any haze pollution in Singapore,

it shall be presumed, until the contrary is proved, that the first entity also did engage in conduct, or did engage in conduct that condones any conduct by another, which caused or contributed to that haze pollution in Singapore.

(4) For the purposes of this Act, it shall be presumed, until the contrary is proved, that the entity owns or occupies any land situated outside Singapore if any of the following maps show the land as owned or occupied by that entity:

(a) any map furnished by, or obtained from, any person pursuant to a notice issued under section 10;

(b) any map furnished by, or obtained from, any government of a foreign State or territory outside Singapore;

(c) any map furnished by, or obtained from, any department of the government of a foreign State or territory outside Singapore, or any instrumentality of the government of a foreign State or territory outside Singapore even if separate and distinct from that government;

(d) any map furnished by any prescribed person through any prescribed means.

Part III of the Act relates to its Administration. Section 9 empowers the Director-General of Environmental Protection to issue an entity with a Prevention Measures Notice. This Notice can require the entity to deploy fire fighting personnel or use other means to extinguish or prevent the spread of any fires on land owned or occupied by the entity or by another entity which is managed by the first entity. The Director-General is also given wide investigative powers to obtain information (s. 10). Penalties are created under section 10(6) and section 10(7) for failure to comply with the notice to furnish documents and information required for investigation, or for wilfully altering, suppressing, destroying or providing false information. The penalties for both offences include a fine not exceeding \$5,000, imprisonment or both.

It should be noted that section 10(3)(d) allows the service of a notice on an entity which does not have any place of business in Singapore, to assist the government in its investigations

under section 10(3). The Minister in the Debate on the Bill, elaborated on this provision, stating

*“The notice will be served personally on an officer of the entity when the officer or the partner of that entity is within Singapore. The National Environment Agency (NEA) will work closely with the Immigration and Checkpoints Authority (ICA), so that we will know when such a person is in Singapore. We will serve the notice to him or her when he or she enters Singapore. Where necessary, the Public Prosecutor could apply for a court order to require the person to remain in Singapore to assist in investigations. Failure of the entity or of the officers of that entity to furnish information and the documents which we require for investigations – if they fail to furnish information and documents without a reasonable excuse – would be an offence, and the officers of such companies who come into Singapore may be charged in court and be liable on conviction to a fine or imprisonment, or both...I would like to reiterate that this Bill is not meant to replace the enforcement actions that should be taken by other countries, but rather to complement their investigative and enforcement efforts.”<sup>12</sup>*

Various questions were raised by Members of Parliament during the debate on the Bill. In particular, it was felt that there should not be a cap on the amount of damages. The Minister concluded

*“while this legislation is a step in the right direction, it is not a silver bullet. It is only one of a slate of measures that we must put in place in order to tackle the transboundary haze that has plagued our region for many years. I strongly believe that regional cooperation within ASEAN is still a critical pillar of the ultimate solution. Enacting this legislation is just one step to re-align commercial interest. We still need the support and cooperation of many other stakeholders – the foreign governments, the companies, the NGOs and fellow Singaporeans – in order to make this region and Singapore safe from haze pollution.”<sup>13</sup>*

It should be emphasised that just before this new law came into effect, the Indonesian Parliament agreed to ratify the Haze Agreement.<sup>14</sup> Greenpeace Indonesia believes that although this is a positive step forward, without aggressive action to combat the root causes

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<sup>12</sup> See n. 4 above

<sup>13</sup> Second Reading of the Bill, Parliament No 12, Session 2, Vol 92, Sitting No. 11, 05 August 2014. <http://www.parliament.gov.sg/publications-singapore-parliament-reports>

<sup>14</sup> <http://www.straitstimes.com/news/asia/south-east-asia/story/indonesias-parliament-agrees-ratify-asean-haze-pact-20140916>; <http://news.mongabay.com/2014/0920-lbell-indonesia-haze-transboundary-agreement.html>

of the issue, ratification is simply political lip service.<sup>15</sup>

*“Although delayed for 12 years, this ratification is a step forward that deserves appreciation,” said Yuyun Indradi, a campaigner for Greenpeace Indonesia, “However, very few government policies appear to be in support of this step. Such as our government regulations to protect peat lands that actually do very little to protect peat lands. 70% of the fires creating smoke pollution burn in peat. As long as there is only minimal protection of peat lands, this ratification is only a political show.”*

It is noted that pressure from the world community is compelling large producers of palm oil to practice sustainable agriculture, and join the Round Table on Sustainable Palm Oil.<sup>16</sup> Even smallholders and native farmers must be aware, by now, of the devastating effects of slash and burn methods of land clearing. A new Sustainable Palm Oil Manifesto<sup>17</sup> has also been developed but this has been met with criticisms of ‘greenwash’ by NGOs including Green Peace.<sup>18</sup>

Singapore's new law to address transboundary haze pollution contains innovative provisions. Its attempt at extra-territorial reach, the defences and presumptions - all these make for an extremely interesting piece of legislation that is hitherto unprecedented. It remains to be seen whether it can be effectively implemented in practice, when the next haze episode occurs.

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<sup>15</sup> <http://news.mongabay.com/2014/0920-lbell-indonesia-haze-transboundary-agreement.html>

<sup>16</sup> <http://www.rspo.org/>

<sup>17</sup> <http://www.carbonstockstudy.com/Documents/Sustainable-Palm-Oil-Manifesto.aspx>

<sup>18</sup> <http://www.foodservicefootprint.com/news/new-sustainable-palm-oil-manifesto-met-criticism>